The Wayback Machine - https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/role_revi…

Printed from https://www.righttoknow.org.au/request/role_review_processes_in_the_fed on December 07, 2022 17:20

Role review processes in the Federal Court for National Judicial Registrars

Mircea made this Freedom of Information request to Australian Public Service Commission

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The request was **refused** by Australian Public Service Commission.

Mircea **March 21, 2022**
Delivered

Dear Australian Public Service Commission,

I refer to an article published in the Australian on 9 February 2022 with the title Federal Court boss warned on job rule sidestep.

In that article the journalists state that the APSC investigation, undertaken by the then acting assistant commissioner Kate McMullan, did not substantiate allegations of impropriety in the recruitment processes which resulted in the appointment of eight registrars under independent flexibility arrangements because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

The problem with this statement is that it is not possible under the law for certain positions to be found suitable for both an Executive Level 2 and SES1 classification, depending on the relative complexity and work load of the position because such that would involve broadbanding across an SES classification band. So much has been confirmed by Assistant Secretary Bridie Dawson of the Attorney-General’s Department (FOI22/028; CM22/2133 – **https://www.righttoknow.org.au/request/s...** (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/ses_broadbanding#incoming-24512)), who, in response to the following request:

documents that set out how it is that positions/roles in the Office may be classified over more than one classification depending on the complexity of the group of duties to be performed, and where one of those classifications in an SES classification,

responded:

Duties cannot be classified over more than one classification, as per Public Service Classification Rules 2000 which states the following:

… (4) If a group of duties to be performed in an Agency involves work value applying to more than one

classification, the Agency Head may allocate more than one classification (called a broadband) to the group of duties.

(5) However, subrule (4) does not apply to a group of duties to be performed by an SES employee.

Please provide access to all the documents (including classification assessments, broadbanding proposals etc) that were provided to Kate McMullan of the Australian Public Service Commission which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

Yours faithfully,

Mircea

FOI, Australian Public Service Commission **March 23, 2022**

5 Attachments

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OFFICIAL

Dear Applicant

The Australian Public Service Commission (APSC) is writing to acknowledge receipt of your request under the Freedom of Information Act 1982 (FOI Act).

The timeframe for responding to your request is 30 days from the date of receipt. This timeframe may be extended in certain circumstances. You will

be notified if these circumstances arise and the timeframe is extended.

Regards

FOI OFFICER

Legal Services

Australian Public Service Commission

Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

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FOI, Australian Public Service Commission **April 11, 2022**

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OFFICIAL

Dear Applicant

The scope of your recent FOI request includes one or more documents containing either personal information or business information about one or more third parties. In such circumstances, the Commission consults with relevant third parties about the disclosure of the information.

The timeframe for responding to your request is therefore extended by 30 days under subsection 15(6) of the Freedom of Information Act 1982.

Regards

FOI OFFICER

Legal Services

Australian Public Service Commission

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From: FOI <[**email address**]>
Sent: Wednesday, 23 March 2022 5:25 PM
To: Mircea <[FOI #8630 email]>
Cc: FOI <[**email address**]>
Subject: SHC22-4926 Acknowledgement [SEC=OFFICIAL]

OFFICIAL

Dear Applicant

The Australian Public Service Commission (APSC) is writing to acknowledge receipt of your request under the Freedom of Information Act 1982 (FOI Act).

The timeframe for responding to your request is 30 days from the date of receipt. This timeframe may be extended in certain circumstances. You will be notified if these circumstances arise and the timeframe is extended.

Regards

FOI OFFICER

Legal Services

Australian Public Service Commission

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FOI, Australian Public Service Commission **May 03, 2022**

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A decision notice is attached.

Regards

FOI OFFICER

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GPO Box 3176 CANBERRA ACT 2601

t: 02 6202 3500 w: [1]www.apsc.gov.au

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From: FOI <[**email address**]>

Sent: Monday, 11 April 2022 5:04 PM
To: Mircea <[FOI #8630 email]>
Cc: FOI <[**email address**]>
Subject: 4926 Extension of time [SEC=OFFICIAL]

OFFICIAL

Dear Applicant

The scope of your recent FOI request includes one or more documents containing either personal information or business information about one or more third parties. In such circumstances, the Commission consults with relevant third parties about the disclosure of the information.

The timeframe for responding to your request is therefore extended by 30 days under subsection 15(6) of the Freedom of Information Act 1982.

Regards

FOI OFFICER

Legal Services

Australian Public Service Commission

Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
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From: FOI <[9][**email address**]>
Sent: Wednesday, 23 March 2022 5:25 PM
To: Mircea <[10][FOI #8630 email]>
Cc: FOI <[11][**email address**]>
Subject: SHC22-4926 Acknowledgement [SEC=OFFICIAL]

OFFICIAL

Dear Applicant

The Australian Public Service Commission (APSC) is writing to acknowledge receipt of your request under the Freedom of Information Act 1982 (FOI Act).

The timeframe for responding to your request is 30 days from the date of receipt. This timeframe may be extended in certain circumstances. You will be notified if these circumstances arise and the timeframe is extended.

Regards

FOI OFFICER

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Mircea **May 07, 2022**
Delivered

Dear Ms Strangio,

Thank you for your decision.

Your decision does not make much sense. I will explain below.

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Australian Public Service Commission's handling of my FOI request 'Role review processes in the Federal Court for National Judicial Registrars'.

You will note that I asked the APSC for all documents (including classification assessments, broadbanding proposals etc) that were provided to Kate McMullan of the Australian Public Service Commission which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

What does this mean? It means that the documents I am asking for are:

1. documents that were provided to Kate McMullan; and
2. are evidence that “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

First, in your decision you claim that the documents are exempt for, among other things, having personal information.

That immediately raises red flags.

More than anybody else in the country, the assistant commissioner for integrity, performance and employment policy would know that "role reviews" are reviews of roles. To put it in terms that you will understand, an assessment of a role is not an assessment of a person. It is an assessment of the groups of duties relative to the Commissioner's work level standards. It is impersonal. It has nothing to do with an individual or individuals. I don't need to quote chapter and verse from the Australian Public Service Classification Guide, which is available here:

https://www.apsc.gov.au/working-aps/aps-... (https://web.archive.org/web/20221207062005/https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/aps-classification-guide)

Going back to the documents, you claim that the document provided to Kate McMullan of the APSC that evidences that “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load" is exempt for having personal information. How could that be? A role review has nothing to do with individuals. Therefore I am immediately suspicious of your claims that this document is, in fact, the document that I requested, or if it is, that the conditional exemptions you have claimed do in fact apply.

Second, you claim that the document is a recruitment outcome document. Another red flag. How can the outcome of a recruitment process determine the scope of a role, and the groups of duties to be performed in that role, by reference to the Commissioner's work level standards? The role assessment, whether it is a review or whether it is an assessment for a new role necessarily precedes any recruitment process and certainly the outcome of that process.

Again, this document cannot be what I asked for.

Moreover, you claim that parts of the document are exempt on the ground of irrelevance. What could be irrelevant in a document that is a record of the reassessment of the scope of a role (i.e. the groups of duties to be performed) by reference to the Commissioner's work level standards?

Do you understand why your decision letter makes no sense?

Having read some of the responses that you have provided, I have had cause to question whether you know what you are doing. This decision has only cemented my concerns about your ability to make lawful decisions under the FOI Act.

That is to say nothing, of course, of the fact that the APSC is under investigation by the Commonwealth Ombudsman for the PID investigation that Kate McMullan, the then assistant commissioner for integrity, performance and employment policy, conducted. It was obviously botched because the Ombudsman conducted a preliminary inquiry and, once that inquiry ended, the Ombudsman decided to investigate the APSC under s 8 of the Ombudsman Act, immediately escalating the investigation to "Category 4". How the

Australian Public Service Commissioner could look senators in the eye and claim, as he does in his hot pocket brief, that the APSC takes PID investigations seriously is beyond me. He must have been one hell of a diplomat.

I invite the person who will be conducting the internal review to make a lawful decision and one that can withstand scrutiny on its face (i.e. I've not even seen these documents and based on the description of the documents have been able to determine that what you have recorded in your decision is nonsense).

A full history of my FOI request and all correspondence is available on the Internet at this address: **https://www.righttoknow.org.au/request/r...** (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/role_review_processes_in_the_fed)

Yours faithfully,

Mircea

FOI, Australian Public Service Commission **May 17, 2022**

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Dear Applicant

The Australian Public Service Commission (APSC) is writing to acknowledge receipt of your request for internal review under the Freedom of Information Act 1982 (FOI Act).

The timeframe for responding to your internal review request is 30 days from the date of receipt. This timeframe for internal review may be extended in very limited circumstances. You will be notified if these

circumstances arise and the timeframe is extended.

Regards

FOI OFFICER

Legal Services

Australian Public Service Commission

Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
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FOI, Australian Public Service Commission **May 23, 2022**

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OFFICIAL

Dear Applicant,

Please see attached.

Kind regards

FOI OFFICER

Legal Services

Australian Public Service Commission

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Australian Public Service Commission **June 30, 2022**

[1]Office of the Australian Information Reference Code: Commissioner ICR_10-49770037-2739

You submitted a form called: FOI Review_

Your form reference code is: ICR_10-49770037-2739

To check the progress of your submission and/or confirm it has been received you should contact the agency that provides the form. These details are displayed below.

Office of the Australian Information Commissioner
[2]**http://www.oaic.gov.au** (https://web.archive.org/web/20221207062005/http://www.oaic.gov.au/) | [3]1300 363 992 | [4][**email address**]
GPO Box 5218, Sydney NSW 2001

Note: Please do not reply to this auto-generated email.

References

Visible links
2. **http://www.oaic.gov.au/** (https://web.archive.org/web/20221207062005/http://www.oaic.gov.au/)
3. file:///tmp/tel:1300 363 992
4. mailto:[**email address**]

Australian Public Service Commission **June 30, 2022**

1 Attachment

attachment.pdf
106K **Download View as HTML**

Our reference: MR22/01085

By email: [FOI #8630 email]

Receipt of your IC review application

Thank you for your application for Information Commissioner Review (IC review).

The Office of the Australian Information Commissioner (OAIC) is considering your application.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to [**email address**] and quote MR22/01085.

Yours sincerely

Freedom of Information Regulatory Group

Office of the Australian Information Commissioner

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attachments.

Mircea **June 30, 2022**
Delivered

Dear Mr Spaccavento,

I have applied for IC review of your decision.

In an identically worded FOI request sent to the Federal Court of Australia, the District Registrar of the South Australia District Registry of the Federal Court, Ms Nicola Colbran, has set aside the decision of Registrar Claire Hammerton Cole, and has stated that there were no documents in existence / that could be found that were provided to Kate McMullan of the Australian Public Service Commission which supported her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

Ms Colbran's decision can be accessed here:

https://www.righttoknow.org.au/request/r... (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/role_review_processes_in_the_fed_2#incoming-26350)

In other words, a District Registrar of the Federal Court, who is empowered the exercise the judicial power of the Commonwealth as invested in a superior court of record, and who does so regularly, has provided a set of reasons that contradict your reasons.

Logically, you cannot both be correct. Either the District Registrar of South Australia is correct, or you are correct. Judging by your track record, I wouldn’t put my money on you.

It’s also worth noting that District Registrar Colbran has set aside several more decisions by Ms Hammerton Cole, two of which are set out below:

https://www.righttoknow.org.au/request/d... (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/documents_about_a_role_review_pr#incoming-26349;) and **https://www.righttoknow.org.au/request/s...** (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/sia_lagos_warned_on_job_rule_sid#incoming-25918).

As I have already stated, your decision is wrong because the documents that you claim were provided to Kate McMullan of the Australian Public Service Commission, which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load", do not, in fact, support Ms McMullan's conclusion.

You are relying on two documents identified by Ms Strangio in her original decision. They are:

a) Email correspondence between Commission and Federal Court of Australia titled “PRIVATE AND

CONFIDENTIAL” dated 27 October 2020; and
b) Judicial Registrar Recruitment Outcome document prepared by Federal Court of Australia.

For the reasons that I set out in my internal review request, the Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia is not a document that supports Ms McMullan's conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load". The Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia is a document that sets out certain content about the allocation of classifications to successful candidates under rule 6 of the Public Service Classification Rules 2000. It also demonstrates unlawful conduct because it shows that Murray Belcher and Russell Trott, both of whom were selected for SES Band 1 "National Judicial Registrar & District Registrar" roles (see **https://www.righttoknow.org.au/request/d...** (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/documents_relating_to_the_recrui#incoming-26028;) and **https://www.righttoknow.org.au/request/d...** (https://web.archive.org/web/20221207062005/https://www.righttoknow.org.au/request/documents_relating_to_the_recrui_2#incoming-26237)), those roles having been classified as SES Band 1 roles under rule 9 of the Public Service Classification Rules 2000, were impermissibly denied their lawful classifications under rule 6. There are notations on that document, next to Mr Belcher's and Mr Trott's names stating "No SES" and "NO SES BUT DR [District Registrar] IFA" respectively. Notes about the allocations of a classifications under rule 6 of the Public Service Classification Rules 2000 to individual employees can and should never be confused with the allocation of a classification to a group of duties, by objective reference to the Public Service Commissioner’s work level standards, under rule 9 of the Public Service Classification Rules 2000. This distinction between the separate classifications for APS employees, under rule 6, and for the groups of duties that an employee will perform, under rule 9, is hammered home in the Australian Public Service Commission’s own documents (e.g. the Australian Public Service Classification Guide). Plainly the Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia you are relying on cannot reasonably or objectively meet the terms of my FOI request. District Registrar Colbran of the Federal Court accepted that to be the case. That Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia, which commences with the words “Further to my memorandum of 22 August 2018 regarding the registrar recruitment exercise, this paper provides a further update on the recruitment exercise and the recommendations endorsed by the recruitment panel for the appointment of candidates to the Senior National Judicial Registrar (SES 2), National Judicial Registrar & District Registrar – VIC, QLD and WA (SES1), Judicial Registrar & District Registrar – TAS (Legal 2) and National Judicial Registrar – Native Title (SES 1) …”, is not a document that in any reasonable or objective sense could not support Ms McMullan’s conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load". That document does not set out a role review because it has nothing to do with the reclassification of roles, under rule 9 of the Public Service Classification Rules 2000), or anything to do with “certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load", or anything to do with an objective evaluation of groups of duties by reference to the Public Service Commissioner’s work level standards. It has everything to do with the impermissible allocations of EL2 classifications to Murray Belcher and Russell Trott to cheat the number of capped SES position by shifting the SES1 classifications that would have been applied to these poor chaps to registrars based in Sydney (you know who I’m talking about). Justice Greenwood confirmed as much in an article published in The Australian on 10 February 2022.

It’s like watching a train wreck in slow motion.

Ta.

Mircea

Mircea left an annotation (November 19, 2022)

UPDATE

On 16 November 2022, I received the following email from Carl English at the Office of the Australian Information Commissioner:

"Our reference: MR22/01085
Agency reference: LEX111

Dear Mircea

I write to you in relation to your IC review application. I apologise for the delay in our response.

By way update, the Australian Public Service Commission responded to our Notice of IC review with the attached submissions. The open submissions have now been shared with you for comment. I note that the OAIC has also accepted a confidential version of these submissions.

Should you wish to provide a response to this submission, or make any further comments in support of the IC review application, please respond to this email by 30 November 2022. After this date, the matter will be progressed based on the available information.

If you require further time, please let us know.

Kind regards

Carl English

Intake and Early Resolution Team
Freedom of Information Regulatory Group
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001 | oaic.gov.au"

Mircea left an annotation (November 19, 2022)

'OPEN' SUBMISSIONS OF CHARMAINE SIMS, GENERAL COUNSEL AT THE APSC, IN RELATION TO IC REVIEW MR22/01085

"Dear Jennifer

OAIC ref: MR22/01085 | APSC ref: LEX 344

We refer to your notice of Information Commissioner Review (IC Review) and request for documents below.

On 26 October 2022, the OAIC granted the Commission's request to submit a confidential submission.

This version of the submission does not contain any confidential information and can be provided to the Applicant.

Scope of IC Review

1. This IC Review application concerns an Internal Review (IR) decision made by Marco Spaccavento of the Australian Public Service Commission (the Commission) on 19 May 2022 ...

5. Ultimately, this IC Review is concerned with whether the Commission interpreted the scope of the request correctly.

Commission submissions

6. The Commission submits the scope of the request was interpreted correctly.

7. This FOI request concerns documents that were provided to Kate McMullan to support her conclusion in a Public Interest Disclosure (PID) investigation.

8. The Commission notes the decision-makers at both the primary and IR decision stages were not involved in the PID investigation and would not be aware of how Kate McMullan used the documents provided to her to investigate the PID. Therefore, the decision-makers took a common sense interpretation of the terms of the request and interpreted the request to mean documents that were provided to Kate McMullan that may have been used by her to come to her conclusion.

9. Paragraph 11 of the IR decision provides commentary to this effect:

'Despite the name of the document "Judicial Registrar Recruitment," the material within that document also contains information that Ms McMullan may have relied upon to conclude that a role review process had occurred. That is, document 2 contains material concerning recruitment outcomes and information that could be used in a role review. I hope this clarifies the issue for you.'

10. The Commission submits that this interpretation of scope at both the primary and IR decision stages was reasonable, given the decision-makers had no involvement in the PID investigation, and providing further detail about whether Ms McMullan used the documents in the PID investigation would be in contravention of secrecy provisions under the PID Act.

11. Further, the Commission submits it is not up to FOI applicants to determine what documents should fall within scope of a request. Under section 23 of the FOI Act, it is up the decision-maker, as the authorised person, to assess whether documents are in scope of a request. Separate FOI decisions made by different agencies are not relevant for the purpose of this IC Review, which deals with how the Commission's decision-makers have

assessed documents held by the Commission.

12. The original FOI request was for:

'all the documents [...] that were provided to Kate McMullan [...] which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been a "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load."

13. For context, 'role evaluation' is the method of determining the relative work value of a job (role) through assessing the nature, impact and accountabilities of the job. Whilst the APS Classification Guide sets out the process for a role evaluation, it does not prescribe how it must be conducted and documented.

14. Document 1 (Email correspondence between the Commission and Federal Court of Australia titled 'PRIVATE AND CONFIDENTIAL' dated 27 October 2020) is an email chain between Ms McMullan, Sia Lagos and Scott Tredwell during the course of the PID investigation. The email contains information that Ms McMullan may have relied upon to conclude that a role review process had occurred.

15. Determining the relative work value of the job (or role) is required for the purpose of a role evaluation. Therefore, the Commission submits the document is in scope of the FOI request as it can reasonably be considered that Ms McMullan relied on the document to come to the conclusion that a role review occurred.

16. Document 2 (Judicial Registrar Recruitment Outcome) was prepared by the Federal Court in the context of a recruitment process and was provided to Ms McMullan during the course of a PID investigation. The Commission acknowledges the primary purpose of the document is not for a role review. However, in the Commission's view, this document provides the elements required at a high level for a role review to be conducted. Therefore, the Commission is satisfied this document is within the scope of the request as:

· it was provided to Ms McMullan as part of the PID investigation; and
· it was open to Ms McMullan to come to the conclusion that a role review had occurred based on this document.

Requested documents

17. The Commission provides the below listed documents in response to this request:

1 - 21 March 202 LEX 44 - Original FOI request
2 - 31 March 2022 LEX 44 - Search result
3 - N/A Document 1 (exempt in full)
4 - N/A Document 2 (exempt in full)
5 - 2 May 2022 LEX 44 - Original notice of decision
6 - 7 May 2022 LEX 111 - Internal Review request
7 - 17 May 2022 LEX 111 - Executive Brief to decision-maker providing rationale for decision

Further information

18. The Commission is of the view the Applicant for this IC Review is likely to be the same individual using pseudonyms to make FOI requests to various agencies via the 'Right to Know' website. It appears these types of requests were made after the Australian published articles about an investigation by the Commission into a

Federal Court recruitment process. IR requests from this Applicant have been unusual in that they often do not seek access to information that was redacted or withheld, but instead assert their request was not adequately addressed and the Commission has not given access to all documents to which the request relates.

Please feel free to contact me should you require any further information.

Kind regards,

Charmaine"

Mircea left an annotation (November 20, 2022)

SUBMISSIONS PROVIDED TO THE OAIC ON 20 NOVEMBER 2022 RESPONDING TO CHARMAINE SIMS' SUBMISSIONS

Dear Mr English

Thank you for providing me with the submissions prepared by Ms Charmaine Sims, General Counsel at the Australian Public Service Commission (APSC), in response to the OAIC's request for information and documents.

Please find my submissions in response set out below. These submission should be read in conjunction with the comments I made in my internal review request, which can be accessed here: https://www.righttoknow.org.au/request/r..., as well as the contents of the email that I sent to Mr Marc Spaccavento on 30 June 2022, which can be accessed here: https://www.righttoknow.org.au/request/r....

Introduction

1. Both the original decision maker, Ms Giorgina Strangio, and the internal review decision maker, Mr Marco Spaccavento, claimed that there were two documents that fell within the scope of my FOI request. The documents in question are listed in Ms Strangio's decision letter as:

a) Email correspondence between Commission and Federal Court of Australia titled "PRIVATE AND CONFIDENTIAL" dated 27 October 2020; and
b) Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia (see https://www.righttoknow.org.au/request/r...).

2. Ms Sims submits, at [5], that "this IC review is concerned with whether the Commission interpreted the scope of the request correctly." I cannot cavil with that characterisation of the issue.

3. Ms Sims submits, at [6] and [8], that both Ms Strangio and Mr Spaccavento interpreted the scope of the FOI request correctly. For the reasons that follow, that submission is patently false.

Preliminary comments on the scope of the FOI request

4. At [7], Ms Sims states that the "FOI request concerns documents that were provided to Kate McMullan to support her conclusion in a Public Interest Disclosure (PID) investigation." That statement is far from accurate.

5. My FOI request was worded accordingly:

Please provide access to all the documents (including classification assessments, broadbanding proposals etc) that were provided to Kate McMullan of the Australian Public Service Commission which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

6. Ms Sims’ characterisation of the FOI request at [7] of her submissions fails to adequately identify the scope of the request for documents. The FOI request does not so much concern documents that were “provided to Kate McMullan to support her conclusion in a Public Interest Disclosure (PID) investigation”, as it concerns the documents that were provided to Kate McMullan that support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

7. In other words, the FOI request relates to documents gathered by Ms McMullan about a specific exculpatory conclusion that she reached – that impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars in the Federal Court were unsubstantiated – because, there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.”

8. At [8], Ms Sims’ states:

The Commission notes that the decision-makers at both the primary and IR decision stages were not involved in the PID investigation and would not be aware of how Kate McMullan used the documents provided to her to investigate the PID. Therefore, the decision makers took a common sense interpretation of the terms of the request and interpreted the request to mean documents that were provided to Kate McMullan that may have been used by her to come to her conclusion.

9. I acknowledge and accept that Ms Strangio and Mr Spaccavento were not involved in the PID investigation. I acknowledge they might not be aware of how Kate McMullan actually used the documents provided to her to investigate the PID.

10. While Ms Sims claims that a common sense interpretation of the terms of the request was adopted, I will demonstrate that this was not the case.

11. A common sense approach to the interpretation of an FOI request presupposes engagement with the text of an FOI request. In order to interpret the scope of the FOI request, the request must be analysed.

12. That analysis is set out in essential terms at paragraph 7 of my submission.

13. The FOI request was made for the documents, which Ms McMullan had been provided with, showing that there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load”, with the role review process being the evidentiary basis upon which Ms McMullan concluded that allegations of impropriety and, presumably, unlawful

conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated.

14. The content of the documents is, thus, a “role review” recording that National Judicial Registrar positions could bear either a “Legal 2” or “SES1” classification.

The meaning of “role review”

15. At [13], Ms Sims submits:

For context, “role evaluation” is the method of determining the relative work value of a job (role) through assessing the nature, impact and accountabilities of the job. While the APS Classification Guide sets out the process for a role evaluation, it does not prescribe how it must be conducted and documented.

16. The first sentence requires elaboration.

17. The Australian Public Service Classification Guide (the Guide), which can be accessed at www.apsc.gov.au/working-aps/aps-employee..., and which has been included as an attached to this email, provides, under the “Legislative Framework” subheading in Part One, that:

a) the Public Service Act 1999 (Cth) is the principal legislation that governs the employment framework for APS employees;
b) the Public Service Act 1999 (Cth) enables the Australian Public Service Commissioner to make rules about the classification of APS employees (Public Service Act 1999 (Cth), s 23(1));
c) the Public Service Classification Rules 2000 (Cth) are rules made by the Australian Public Service Commissioner about the classification of APS employees;
d) Agency Heads must comply with the Public Service Classification Rules 2000 (Cth) (Public Service Act 1999 (Cth), s 23(3));
e) the Public Service Classification Rules 2000 (Cth) govern APS classification arrangements;
f) the Public Service Classification Rules 2000 (Cth) provide the foundation for mobility within the Australian Public Service by specifying a system of managing “groups of duties” common to all APS agencies;
g) an Agency Head must allocate an approved classification to each group of duties to be performed in the agency, based on the work value of the group of duties (Public Service Classification Rules 2000 (Cth), rr 9(1) and 9(2));
h) for APS, Executive Level and SES classifications, the allocation of the approved classifications must be based on the work value as described in the work level standards issued, in writing, by the Australian Public Service Commissioner (Public Service Classification Rules 2000 (Cth), r 9(2A)); and
i) more than one classification (called a broadband) can be allocated to a group of duties (Public Service Classification Rules 2000 (Cth), r 9(4)).

18. Plainly:

a) an Agency Head must allocate an approved classification to each group of duties to be performed in the agency, based on the work value of the group of duties; and
b) for APS, Executive Level and SES classifications, the allocation of the approved classifications must be based on the work value as described in the work level standards issued, in writing, by the Australian Public Service Commissioner.

19. The work level standards that the Australian Public Service Commissioner has issued, in writing, can be

accessed on the APSC's website:

a) www.apsc.gov.au/working-aps/aps-employee... and
b) www.apsc.gov.au/working-aps/aps-employee....

20. As Ms Sims noted at [13] of her submissions "'role evaluation' is the method of determining the relative work value of a job (role) through assessing the nature, impact and accountabilities of the job." That definition of role evaluation is a replication of the definition of "role evaluation" contained under the subheading "Role evaluation" in Part Four of the Guide. Curiously, Ms Sims has neglected to include the sentences that follow the sentence she replicated. The passages under the subheading "Role evaluation" actually read:

Role evaluation is the method of determining the relative work value of a job (role) through assessing the nature, impact and accountabilities of the job. Evidence to support this assessment should be gathered in a structured and systematic way.

Role evaluation is a two part process. First, evidence is gathered to understand the role (job analysis). Second, the role is assessed and measured against established criteria, using work level standards.

21. According to the subheading "Assessing a role" in Part Four of the Guide, the "primary purpose" of role assessment, which is the second limb of role evaluation, is "to allocate a classification level to a job." The passage continues accordingly:

To classify a job, the information obtained about the role and responsibilities is compared with the relevant work level standards. Work level standards capture the way in which tasks and responsibilities differ across classifications. In determining the appropriate classification for the job, an assessment should consider those characteristics of the work level standards that are most relevant to the role.

22. But that is not all Part Four of the Guide provides. Part Four of the Guide, which is about role evaluation in the context of classification evaluation provides, contrary to Ms Sims' claim that the Guide does not prescribe how role evaluation must be conducted and documented, that "[t]horough information and documentation procedures in relation to classification decisions are necessary elements in safeguarding the integrity of the process."

The passage continues accordingly:

A decision to allocate a new or revised classification level to a job is made under delegated authority under the Public Service Act 1999 and the Public Service Classification Rules 2000. This means that a record of decision must be made, including the reasons for the decision.

Adequate documentation in support of classification decisions can also provide valuable information to assist any subsequent review of a job where, for example, further work value changes may need to be assessed.

23. In summary, one may say the following about a "role evaluation", which includes a "role review" because a role review is nothing but the "re-evaluation" of a role:

a) there a positive policy imperative to gather evidence to support a role evaluation in a structured and systematic way;
b) there is a positive policy imperative to assess and measure the role against established criteria, including the work level standards;

c) the primary purpose of assessing and measuring the role against established criteria is to allocate a classification level to the role;
d) there is a positive policy imperative to document the “role evaluation”, including any role reviews.

24. The policy imperatives set out in the Guide are made enforceable by statutory obligations binding Agency Heads, Statutory Office Holders and APS employees.

25. APS employees are, at all times, required to behave in a way that upholds:

a) the APS Values and APS Employment principles, and
b) the integrity and good reputation of the employee’s agency and the APS (Public Service Act 1999 (Cth), s 13(11)).

26. The obligations set out in s 13(11) of the Public Service Act 1999 (Cth) are extended to Agency Heads and Statutory Office Holders under s 14 of the Public Service Act 1999 (Cth).

27. One of the APS Values pertains to ethics. Subsection 10(2) of the Public Service Act 1999 (Cth) provides:

The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

28. Under s 11 of the Public Service Act 1999 (Cth), The Australian Public Service Commissioner is empowered to issue directions, in writing, in relation to the APS Values for the purposes of:

a) ensuring that the APS incorporates and upholds the APS Values; and
b) determining, where necessary, the scope or application of the APS Values.

29. Section 14 in both the Australian Public Service Commissioner’s Directions 2016 (Cth) and the revised Australian Public Service Commissioner’s Directions 2022 (Cth) provides:

Having regard to an individual’s duties and responsibilities, upholding the APS Value in subsection 10(2) of the Act requires the following:

…

(e) acting in a way that is right and proper, as well as technically and legally correct or preferable.

30. The Guide, in all probability, sources its existence to powers conferred by a Commonwealth statute (Public Service Act 1999 (Cth), ss 41(1)(b), 41(2)(c), 41(2)(r)).

31. There is nothing to suggest that the Guide is anything other than the product of the lawful exercise of power.

32. There is nothing to suggest that the policy imperatives set out in the Guide in respect of role evaluations, and the documentation of such evaluations, constitute anything other than lawful instructions on the exercise of powers set out in rule 9 of the Public Service Classification Rules 2000 (Cth) (i.e. powers relating to the allocation of classifications to groups of duties).

33. Nothing in the Guide suggests that there is a lawful discretion on the part of any Agency Head, or a person acting with the authority of an Agency Head, to depart from the policy imperatives set out in respect of role

evaluations and classification decisions in general.

34. No person could reasonably contend that it is ever right and proper, as well as technically and legally correct or preferable to conduct a role evaluation with a view to allocating a classification where:

a) evidence is not gathered to support a role evaluation in a structured and systematic way;
b) the role is not assessed and measured against established criteria, including the work level standards;
c) “role evaluations”, including any role reviews, are not properly documented.

35. Therefore, there is a legal obligation, sourced in the Public Service Act 1999 (Cth) and elaborated in both the Australian Public Service Commissioner’s Directions 2016 (Cth) and the revised Australian Public Service Commissioner’s Directions 2022 (Cth), that requires a person to:

a) gather evidence to support a role evaluation in a structured and systematic way;
b) assess and measure the role against established criteria, including the work level standards;
c) properly document the “role evaluation”, including any role reviews.

36. The term “role review” has objective semantic and pragmatic content, which is readily discernible, and, putting to one side the legal requirement to document a “role review”, the essential attributes of a “role review” consist of:

a) gathering evidence to support a role evaluation in a structured and systematic way;
b) assessing and measuring the role against established criteria, including the work level standards, so as to allocate an appropriate classification level (set out in Schedule 1 of the Public Service Classification Rules 2000 (Cth)) to the role.

The scope of the FOI request

37. Clearly, a request for access to all the documents (including classification assessments, broadbanding proposals etc) that:

a) were provided to Kate McMullan of the Australian Public Service Commission; and
b) support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load”,

requires an FOI decision maker to identify documents showing that “there had been ‘a role review process’.”

38. Furthermore, the documents showing that there had been a role review process must pertain to National Judicial Registrar positions being found suitable for “Legal 2” or “SES1” classifications depending on the relative complexity and workload of the roles.

39. As noted in paragraph 1 of these submissions, the documents that Ms Strangio, Mr Spaccavento and Ms Sims claim are within the scope of my FOI request are:

a) Email correspondence between Commission and Federal Court of Australia titled “PRIVATE AND CONFIDENTIAL” dated 27 October 2020; and
b) Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia.

40. I will address the content of the documents that Ms Sims claims are within the scope of my FOI request in turn.

Email correspondence between Commission and Federal Court of Australia titled “PRIVATE AND CONFIDENTIAL” dated 27 October 2020 – Document 1

41. Document 1 is a reply email, sent from Scott Tredwell to Kate McMullan on 27 October 2020. Sia Lagos, the Federal Court of Australia’s Chief Executive Officer and Principal Registrar, was copied to Mr Tredwell’s email.

42. [REDACTED]

43. [REDACTED]

44. [REDACTED]

45. Mr Tredwell’s response to Ms McMullan’s email is contained in Document 1, which Ms Sims provided to the OAIC on 3 November 2022.

46. “Paragraph 1” of Mr Tredwell’s response addresses the question about [REDACTED].

47. “Paragraph 2” of Mr Tredwell’s response addresses the “appointment” of National Judicial Registrars. Mr Tredwell’s response begins with “[t]here is no specific document that identifies when a National Judicial Registrar position is classified as SES1 or EL2.” That’s a promising start!

48. Mr Tredwell then goes on to say:

[REDACTED]

49. In other words:

a) [REDACTED]; and
b) [REDACTED].

50. Mr Tredwell’s response is just fluff. It is inane and useless commentary. It does not address Ms McMullan’s questions ([REDACTED]).

51. Importantly, nothing in Mr Tredwell’s email of 27 October 2020 provides any evidence or anything that might remotely come close to being considered evidence of a “role review”. Putting to one side the requirement to document a role evaluation, or a review of a role evaluation (i.e. a role review), the essential attributes of a “role review” consist of:

a) gathering evidence to support a role evaluation in a structured and systematic way;
b) assessing and measuring the role against established criteria, including the work level standards, so as to allocate an appropriate classification level (set out in Schedule 1 of the Public Service Classification Rules 2000 (Cth)) to the role.

Those attributes are the essential and objective semantic and pragmatic content of the term “role review”.

52. Nothing in the email of 27 October 2020 indicates that evidence was gathered to support a role evaluation in a structured and systematic way.

53. Nothing in the email of 27 October 2020 indicates that the National Judicial Registrar role was assessed or measured against established criteria, including the work level standards, so as to allocate EL2 or SES1 classification levels to the National Judicial Registrar role.

54. Nothing in the email of 27 October 2020 indicates that there was a re-evaluation of the National Judicial Registrar role to determine that the role was capable of bearing both an EL2 and SESB1 classification, "depending on the relative complexity and workload of the roles." This is to say nothing of the proscription contained in rule 9(5) of the Public Service Classification Rules 2000 (Cth), which forbids deliberate or functional broadbanding arrangements (according to the Guide, broadbanding means that "where there are elements of work at two or more classifications that are very similar in nature, but vary in complexity, than an agency head may choose to broadband those classifications) across SES band classifications.

55. It is important to understand what I am saying in paragraphs 52 – 54 of my submissions.

56. I am not saying that:

a) "nothing in the email of 27 October 2020 contains data or evidence that was gathered to support a role evaluation in a structured and systematic way"; or
b) "nothing in the email of 27 October 2020 contains data or evidence of the assessment of the National Judicial Registrar role against established criteria, including the work level standards, so as to allocate EL2 or SES1 classification levels to the National Judicial Registrar role".

That is plain on the face of the document.

57. What I am saying is that there is nothing in Document 1 to indicate that:

a) evidence was gathered to support a role evaluation in a structured and systematic way; or
b) the National Judicial Registrar role was assessed and measured against established criteria, including the work level standards, so as to allocate an appropriate classification level (set out in Schedule 1 of the Public Service Classification Rules 2000 (Cth)) to the role.

58. Not only is Document 1 not evidence, or a fragment of evidence, that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load." Document 1 does not even contain an indication that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load."

59. But more than that, Document 1 contains the damning concession that "[t]here is no specific document that identifies when a National Judicial Registrar position is classified as SES1 or EL2."

Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia – Document 2

60. Document 2 is a document that sets out:

a) the Court's registrar resources and their workloads;
b) referrals to mediation and statistics relating to the outcomes of mediations;
c) the numbers of applications filed in respect of corporate and personal insolvency matters handled by registrars of the Federal Court and the Federal Circuit Court;
d) the recommended candidates for the SES Band 2 Senior National Judicial Registrar vacancy, the SES Band 1 National Judicial Registrar & District Registrar – Victoria vacancy, the SES Band 1 National Judicial Registrar & District Registrar – Queensland vacancy, the SES Band 1 National Judicial Registrar & District Registrar – Western Australia vacancy, the National Judicial Registrar – Native Title vacancy, and the Judicial Registrar & District Registrar – Tasmania vacancy; and
e) the allocation of registrar resources across the Federal Court's District Registries.

61. It must be noticed that there is nothing in the document about the evaluation of SES Band 1 National Judicial Registrar (as distinguished from SES Band 1 National Judicial Registrars and District Registrars, with the National Judicial Registrar and District Registrar roles constituting a separate class of registrars in the Court's annual report, in the Court's registrar list on the Federal Court's website (see www.fedcourt.gov.au/about/registrars/cur..., and by virtue of the fact that National Judicial Registrars and District Registrars are, unlike National Judicial Registrars, appointed to the office of District Registrar referred to in paragraph 18N(1)(a) of the Federal Court of Australia Act 1976 (Cth), especially in furtherance of the requirement for the Chief Executive Officer and Principal Registrar of the Federal Court to ensure that at least one registry in each State includes a District Registrar in that State (s 34(3) of the Federal Court of Australia Act 1976 (Cth)) or Executive Level 2 (or Legal 2) National Judicial Registrar roles.

62. Indeed there is actually nothing in the document about SES Band 1 or Executive Level 2 (or Legal 2) National Judicial Registrars. I must stress that I am saying more than there is nothing about the evaluation of SES Band 1 or Executive Level 2 (or Legal 2) National Judicial Registrar roles. I am saying that there is nothing in Document 2 about SES Band 1 or Executive Level 2 (or Legal 2) National Judicial Registrars (as distinct to something about the candidates for the SES Band 2 Senior National Judicial Registrar role, the candidates for the SES Band 1 National Judicial Registrars & District Registrar role, the candidates for the SES Band 1 National Judicial Registrar – Native Title role, and the candidate for the Executive Level 2 (Legal 2) Judicial Registrar & District Registrar role).

63. In any case, there is not a skerrick of data about role evaluations or role reviews, let alone role reviews where a finding is made that the National Judicial Registrar role is capable of bearing both "Legal 2" or "SES1" classifications.

64. Ms Sims' submission, at [16], pretty well sums up the straws the APSC is clutching at. Ms Sims states:

Document 2 (Judicial Registrar Recruitment Outcome) was prepared by the Federal Court in the context of a recruitment process and was provided to Ms McMullan during the course of a PID investigation. The Commission acknowledges the primary purpose of the document is not for a role review. However, in the Commission's view, this document provides the elements required at a high level for a role review to be conducted. Therefore, the Commission is satisfied this document is within the scope of the request as:

• it was provided to Ms McMullan as part of a PID investigation; and
• it was open to Ms McMullan to come to the conclusion that a role review has occurred based on this document.

65. Ms Sims states that Document 2 "provides the elements required at a high level for a role review to be conducted." What that obscure passage means is anybody's guess but whatever it means, it is not on point. I

asked for access to documents that were provided to Kate McMullan that supported her exculpatory conclusion (allegation of impropriety in the context of the recruitment of National Judicial Registrar were unsubstantiated) because there had been (past tense) “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.” I did not ask for documents that provide the elements, at a high level, for a role review to be conducted (future tense). Ms McMullan made a finding (past tense). I am not interested in a document that has the “high level” elements for some hypothetical role review to be conducted.

66. Ms Sims then states that, on the basis of Document 2 having the element required, at a high level, for a role review to be conducted (future tense), it was open to Ms McMullan to conclude that “a role review has occurred based on [Document 2].” What nonsense.

67. But if that faulty reasoning is not enough to invalidate Ms Sims’ submissions about Document 2, let me repeat the point I made in both my internal review request (https://www.righttoknow.org.au/request/r...) and my email to Mr Spaccavento on 30 June 2022 (https://www.righttoknow.org.au/request/r...

The Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia is a document that sets out certain content about the allocation of classifications to successful candidates under rule 6 of the Public Service Classification Rules 2000 …

Notes about the allocations of a classifications under rule 6 of the Public Service Classification Rules 2000 to individual employees can and should never be confused with the allocation of a classification to a group of duties, by objective reference to the Public Service Commissioner’s work level standards, under rule 9 of the Public Service Classification Rules 2000. This distinction between the separate classifications for APS employees, under rule 6, and for the groups of duties that an employee will perform, under rule 9, is hammered home in the Australian Public Service Commission’s own documents (e.g. the Australian Public Service Classification Guide). Plainly the Judicial Registrar Recruitment Outcome document prepared by the Federal Court of Australia you are relying on cannot reasonably or objectively meet the terms of my FOI request. District Registrar Colbran of the Federal Court accepted that to be the case …

That document does not set out a role review because it has nothing to do with the reclassification of roles, under rule 9 of the Public Service Classification Rules 2000), or anything to do with “certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load", or anything to do with an objective evaluation of groups of duties by reference to the Public Service Commissioner’s work level standards.

68. As I pointed out in paragraph 36 of these submissions:

We may conclude that the term “role review” has objective semantic and pragmatic content, which is readily discernible, and, putting to one side the legal requirement to document a “role review”, the essential attributes of a “role review” consist of:

a) gathering evidence to support a role evaluation in a structured and systematic way;
b) assessing and measuring the role against established criteria, including the work level standards, so as to allocate an appropriate classification level (set out in Schedule 1 of the Public Service Classification Rules 2000 (Cth)) to the role.

69. There is nothing in Document 2 that remotely resembles a role review, or even indicates that a role review

was conducted. It could not reasonably be argued that hand written notes about the classifications to be allocated, under rule 6 of the Public Service Classification Rules 2000 (Cth), to employees who had been selected by selection committees for the "National Judicial Registrar & District Registrar – QLD" and "National Judicial Registrar & District Registrar – WA" vacancies indicated, let alone constituted the fact, that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load."

Ms Sims' submission about the determination of the scope of an FOI request

70. At [11] of her submissions, Ms Sims claims:

Further, the Commission submits it is not up to FOI applicants to determine what documents should fall within the scope of a request. Under section 23 of the FOI Act, it is up (sic) the decision-maker, as the authorised person, to assess whether documents are in scope of a request …

71. Ms Sims' submission, at [11], is almost identical to a submission that Ms Claire Hammerton Cole of the Federal Court of Australia made to the Office of the Australian Information Commissioner. In submissions dated 6 October 2022, which can be accessed on Right to Know (https://www.righttoknow.org.au/request/v...), Ms Hammerton Cole states:

The Court maintains its position that it is not up to the FOI applicant to determine what documents do and do not fall within the scope of their FOI request. That question is to be determined by the requisite decision-maker who has the appropriate delegation under s 23 of the FOI Act, following all reasonable steps taken to search for documents and an assessment of each of those documents as to whether they are within the scope of the request.

72. The submission made by Ms Hammerton Cole was in response to claims made by an access applicant that the documents that access was granted to to were not the documents that had been requested: https://www.righttoknow.org.au/request/v....

73. I gratefully adopt and adapt that access applicant's submissions (https://www.righttoknow.org.au/request/v...) in response to Ms Hammerton Cole's submissions that "it is not up to the FOI applicant to determine what documents do and do not fall within the scope of their FOI request."

74. To the extent that Ms Sims is submitting that I have challenged Ms Strangio's authority, as the original FOI decision maker, or the authority of Marco Spaccavento, as the internal review decision maker, to make the relevant decisions under the FOI Act, that submission is nonsense; I have done no such thing.

75. To the extent that Ms Sims is submitting that because Giorgina Strangio and Marco Spaccavento had authority to make decisions in respect of my FOI request under the FOI Act, I am precluded from drawing errors of fact or law to the attention of a reviewing officer, then Ms Sims has misapprehended the entire concept of (merits) review. Indeed, if this is the meaning of Ms Sim's submission, then Ms Sims has elided the concept of the authority to decide with the concept of the correctness of a decision.

76. Just because a person has authority to make a decision, it does not follow that the decision cannot be challenged. If that were the case, then once a decision maker's jurisdiction had been enlivened, then any decision, right or wrong, would exhaust the matter. In other words, the only relevant question would be "does the person have authority to decide?", and the correctness or otherwise of the person's decision would be irrelevant.

Indeed, the need for reasons would be pointless because, right or wrong, the making of a decision (whether it is made rationally or capriciously, or without any regard to evidence, or without any regard to reality) would end the matter.

77. The folly of Ms Sims' submission, at [11], is apparent when one considers the internal review decision that Ms Nicola Colbran, National Judicial Registrar and District Registrar of the South Australia District Registry of the Federal Court of Australia, provided to me in respect of a near identically worded FOI request that I submitted to the Federal Court of Australia (https://www.righttoknow.org.au/request/r...). In my internal review request, I drew attention to the fact that Claire Hammerton Cole's FOI decision did not make much sense because she claimed that the "role review" document:

a) contained personal information; and
b) recorded "the process by which the PID investigation was undertaken" and disclosed "material prepared or recorded as part of that deliberative PID process ..."

78. Ms Colbran acknowledged that the documents that Ms Hammerton Cole claimed were within the scope of my FOI request were, in reality, not within scope. Ms Colbran did not, with a huff, insist, as Ms Sims does, that "it is not up to FOI applicants to determine what documents should fall within the scope of a request." Clearly, Ms Colbran understands the distinction between:

a) a person having authority to decide; and
b) the correctness of a decision.

The relevance of Ms Colbran's FOI decision

79. I noted, in paragraph 70 of my submissions, that Ms Sims insisted that "it is not up to FOI applicants to determine what documents should fall within the scope of a request."

80. Aside from noting that "it is not up to FOI applicants to determine what documents should fall within the scope of a request", Ms Sims also noted, at [11] of her submissions:

… Separate FOI decisions made by different agencies are not relevant for the purpose of this IC Review, which deals with how the Commission's decision-makers have assessed documents held by the Commission.

81. Ms Sims' submission on the irrelevance of other FOI decision "for the purpose of this IC Review" begs the question "relevant in respect of what?"

82. If the issue is the reasonability of Ms Strangio's or Mr Spaccavento's assessment of documents that they claim fall within the scope of my FOI request, then Ms Colbran's decision that the Federal Court of Australia has no documents "that were provided to Kate McMullan of the Australian Public Service Commission which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been 'a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load'" is indeed relevant, especially because both Ms Strangio and Mr Spaccavento claimed that the documents in question were provided to the Australian Public Service Commission by the Federal Court of Australia.

83. If the issue is the reasonability of my view that neither Document 1 nor Document 2 falls within the scope of

my request in the light of a near identically worded request made to the Federal Court, then, contrary to Ms Sims' claim, then Ms Colbran's decision that the Federal Court of Australia has no documents "that were provided to Kate McMullan of the Australian Public Service Commission which support her conclusion that allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated because there had been 'a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load'" is indeed relevant, especially because both Ms Strangio and Mr Spaccavento claimed that the documents in question were provided to the Australian Public Service Commission by the Federal Court of Australia.

84. Thus, Ms Sims' claim that "FOI decisions made by different agencies are not relevant for the purpose of this IC Review" is demonstrably nonsense.

The elephant in the room

85. It will be recalled that in paragraph 11 of my submissions I noted:

A common sense approach to the interpretation of an FOI request presupposes a willingness to engage with the text of an FOI request.

86. Ms Sims submitted, at [8]:

… the decision-makers took a common sense interpretation of the terms of the request and interpreted the request to mean documents that were provided to Kate McMullan that may have been used by her to come to her conclusion.

87. Had I wanted the decision makers to provide me with document that "may have been" used by Ms McMullan, however mistaken Ms McMullan was about their probative value or relevance to the material finding that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load", then I would have worded my FOI request in such a way.

88. I did not word my FOI request by reference to the documents that Ms McMullan may or may not have turned her mind to when she made her finding that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load", such finding being the basis of her exculpatory conclusion that nothing improper occurred during the recruitment exercises undertaken by the management of the Federal Court to recruit candidates for SES Band 1 and Executive Level 2 classified National Judicial Registrars vacancies. Ms McMullan's state of mind is not the subject of inquiry. Nor would I have been foolish enough to word an FOI request so as to request the FOI decision maker to apprehend Ms McMullan's inaccessible thought processes.

89. My FOI request is worded by reference to the documents that support an exculpatory conclusion because there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load." In other words, my FOI request is worded by reference to existing documents that support an exculpatory conclusion because an objective state of affairs is said to have existed by Ms McMullan. That objective state of affairs is the "role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load."

90. For the reasons that I have advanced in paragraphs 41 – 59 and paragraphs 60 – 69 of these submissions, Documents 1 and 2 are not documents that evidence that a role review had taken place, resulting in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load. For the reasons that I have advanced in paragraphs 41 – 59 and paragraphs 60 – 69 of these submissions, Documents 1 and 2 are not documents that are in any way indicative of a role review having taken place, resulting in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load. For the reasons that I have advanced in paragraphs 41 – 59 and paragraphs 60 – 69 of these submissions, Documents 1 and 2 do not contain data that, even remotely, relate to a role review having taken place, resulting in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load. In the light of the meaning of a "role review" (paragraphs 15 – 36 of these submissions), for the reasons set out in paragraphs 37 – 69 of these submissions, neither Document 1 nor Document 2 is a document that could reasonably fall within the scope of the terms of my FOI request.

91. Plainly, and contrary to Ms Sims' submission at [10], it was not open to either Ms Strangio or Mr Spaccavento to conclude that Documents 1 and 2 were reasonably within the scope of my FOI request.

92. I submit that Ms Strangio's and Mr Spaccavento's, and, by extension, Ms Sims', insistence, in the face of all reason, that Documents 1 and 2 are documents that reasonably fall within the scope of my FOI request is motivated by a desire to save face. The decision makers and Ms Sims insist that Documents 1 and 2 are the only documents relevant to my FOI request. If the decision makers were to accept that Documents 1 and 2 did not reasonably fall within the scope of my FOI request, then the decision makers would be conceding that no documents were provided to Kate McMullan, which supported her exculpatory conclusion on the basis of there having been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load."

93. Of course, that would mean that a material finding of fact (that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load"), upon which Ms McMullan's exculpatory conclusion is grounded, is a finding of fact based on no evidence. If the material finding of fact is based on no evidence, then the exculpatory conclusion which is based on the materials finding of fact is based on no evidence. In practical terms, the concession that Documents 1 and 2 are not documents that support her exculpatory conclusion on the premise that there had been "a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load" would be a concession that Ms McMullan's public interest disclosure investigation was, at least in respect of her material finding about a "role review", inadequate. An inadequate investigation provides a legitimate ground for making an external disclosure under the Public Interest Disclosure Act 2013 (Cth).

94. I submit that Ms Sims' desperate and feeble attempt to justify the decisions made by Ms Strangio and Mr Spaccavento is motivated primarily, if not solely, by the Australian Public Service Commission's unwillingness to accept that a public interest disclosure investigation conducted by an acting assistant commissioner of the APSC was sorely mishandled.

95. That Ms Sims' submissions are desparate and feeble is self-evident; the submissions do not rise above assertions of opinion, and not one of those opinions (e.g. that "the Commission is satisfied [Document 2] is within the scope of the request as … it was open to Ms McMullan to come to the conclusion that a role review had occurred based on [Document 2]") is supported by any probative evidence or cogent reasoning.

96. Ms Sims' submissions should be afforded the weight they deserve i.e. not much.

Ms Sims' observations at [18]

97. At [18] of her submission, Ms Sims notes:

The Commission is of the view the Applicant for this IC Review is likely to be the same individual using pseudonyms to make FOI requests to various agencies via the 'Right to Know' website. It appears these types of requests were made after the Australian published articles about an investigation by the Commission into a Federal Court recruitment process. IR requests from this Applicant have been unusual in that they often do not seek access to information that was redacted or withheld, but instead assert their request was not adequately addressed and the Commission has not given access to documents to which the request relates.

98. I think it somewhat ironic for Ms Sims to advance an opinion about my identify and the identities of access applicants who have made FOI requests to other agencies, such opinion being unsupported by evidence and being of no legal consequence, when, in the same set of submissions, she bleats about the irrelevance of decisions made by decision makers in other agencies that are, plainly, relevant to this review request.

99. I would not be compelled to note that my FOI request was not adequately addressed had decision makers in the APSC adequately addressed my request. There is nothing unusual about drawing attention to dubious reasons for decision, particularly where it is plain, on the face of the decision letter, that the documents are not within scope. As I made clear in my request for internal review, a document (Document 2) that is characterised as recording the outcome of a recruitment process is a red flag because the outcome of a recruitment process does not determine the scope of a role, and the groups of duties to be performed in that role, by reference to the Commissioner's work level standards (i.e. a "role review"). I can't help noticing the glaringly lousy reasons of the APSC's assistant commissioners (i.e. Ms Strangio and Mr Spaccavento). I can't help the fact that I am not a complete dullard.

100. Ms Sims' submission, at [18], is at best a useless observation in the context of this review.

My observations about Ms McMullan's finding that there had been a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load

101. I would like to draw the FOI Commissioner's attention to a set of FOI decisions made by decision makers in the Federal Court.

102. The following FOI requests are relevant:

a) https://www.righttoknow.org.au/request/m...
b) https://www.righttoknow.org.au/request/r...
c) https://www.righttoknow.org.au/request/r...
d) https://www.righttoknow.org.au/request/m...
e) https://www.righttoknow.org.au/request/c... and
f) https://www.righttoknow.org.au/request/u....

Request "a"

103. Request “a” refers to an FOI request made by an access applicant on 30 April 2022.

104. The access applicant’s FOI request is worded as follows:

Under the FOI Act I request access to the following documents:

...

2) the classification evaluation for the National Judicial Registrar role that Phillip Allaway was selected to fill;

…

6) the classification evaluation for the National Judicial Registrar role that Matthew Benter was selected to fill;

…

10) the classification evaluation for the National Judicial Registrar role that Rupert Burns was selected to fill;

…

14) the classification evaluation for the National Judicial Registrar role that Claire Gitsham was selected to fill;

…

18) the classification evaluation for the National Judicial Registrar role that Susan O'Connor was selected to fill;

…

22) the classification evaluation for the National Judicial Registrar role that David Ryan was selected to fill;

…

26) the classification evaluation for the National Judicial Registrar role that Tuan Van Le was selected to fill ...

105. In an internal review decision (https://www.righttoknow.org.au/request/m...) provided to the access applicant, Scott Tredwell, the Federal Court’s General Counsel, stated:

In relation to the request for classification evaluation documents in items (2), (6), (10), (14), (18), (22) and (26) of your FOI request, I refuse your request for these documents pursuant to subsection 24A(1) of the FOI Act. I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist.

Request “b”

106. Request “b” refers to an FOI request made by an access applicant on 12 March 2022.

107. The access applicant’s FOI request is worded as follows:

For each of:

a) Phillip Allaway;
b) Matthew Benter;
c) Rupert Burns;
d) Claire Gitsham;
e) Susan O'Connor;
f) Tuan Van Le; and
g) David Ryan,

I request the following documents under the FOI Act:

…

ii) the classification assessment for the Legal 2 National Judicial Registrar vacancies that relevant registrars first came to fill;
iii) to the extent that it differs from the documents in ii), the classification assessment for the Executive Level 2 National Judicial Registrar vacancies that relevant registrars first came to fill;
iv) the classification assessment for the SES Band 1 National Judicial Registrar vacancies that relevant registrars first came to fill …

108. In an internal review decision (https://www.righttoknow.org.au/request/r...) provided to the access applicant, Nicola Colbran, National Judicial Registrar & District Registrar of the South Australia District Registry of the Federal Court, stated:

In relation to the documents in items (ii), (iii) and (iv) of your FOI request, the decision of 11 May 2022 stated that no documents were found. I am satisfied that this is correct. I therefore refuse your request to access the documents as I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist (see s 24A(1) of the FOI Act).

Request "c"

109. Request "c" refers to an FOI request made by an access applicant on 13 February 2022.

110. The access applicant's FOI request is worded as follows:

I would like access to the following documents:

…

b) the APS role and classification evaluation records for the Legal 2 National Judicial Registrar positions;
c) the SES role and classification evaluation records for the SES Band 1 National Judicial Registrar positions …

111. In an internal review decision (https://www.righttoknow.org.au/request/r...) provided to the access applicant, Nicola Colbran, National Judicial Registrar & District Registrar of the South Australia District Registry of the Federal Court, stated:

I refuse your request to access documents described in items b) and c) of your FOI request. I am satisfied that all

reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist (see s 24A(1) of the FOI Act).

Request “d”

112. Request “d” refers to an FOI request made by an access applicant on 1 May 2022.

113. The access applicant’s FOI request is worded as follows:

Under the FOI Act I request access to the following documents:

…

2. Classification evaluations for the National Judicial Registrar roles

a) the classification evaluation for the National Judicial Registrar role that Phillip Allaway applied for and was selected to fill;
b) the classification evaluation for the National Judicial Registrar role that Matthew Benter applied for and was selected to fill;
c) the classification evaluation for the National Judicial Registrar role that Rupert Burns applied for and was selected to fill;
d) the classification evaluation for the National Judicial Registrar role that Claire Gitsham applied for and was selected to fill;
e) the classification evaluation for the National Judicial Registrar role that Susan O’Connor applied for and was selected to fill;
f) the classification evaluation for the National Judicial Registrar role that David Ryan applied for and was selected to fill;
g) the classification evaluation for the National Judicial Registrar role that Tuan Van Le applied for and was selected to fill …

114. In an internal review decision (https://www.righttoknow.org.au/request/m...) provided to the access applicant, Nicola Colbran, National Judicial Registrar & District Registrar of the South Australia District Registry of the Federal Court, stated:

Documents in item (2) of your request

The decision dated 30 June 2022 stated that no documents were found. I am satisfied that this is correct. I therefore refuse your request to access the documents as I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist (see s 24A(1) of the FOI Act).

Request “e”

115. Request “e” refers to an FOI request made by an access applicant on 19 February 2022.

116. The access applicant’s FOI request is worded as follows:

Under the Freedom of Information Act 1982 (Cth), I request access to documentary copies of all classification

evaluations conducted for Legal 2 and SES 1 National Judicial Registrar roles in the Federal Court …

117. In an internal review decision (https://www.righttoknow.org.au/request/c...) provided to the access applicant, Scott Tredwell, the Federal Court's General Counsel, stated:

I have reconsidered your request received by the Court on 19 February 2022, Registrar Hammerton Cole's decision and your request for internal review. I have decided to refuse your request under section 24A(1) of the FOI Act, because I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist.

Request "f"

118. Request "f" refers to an FOI request made by an access applicant on 24 April 2022. Request "f" was made by the same access applicant who made Request "e".

119. Request "f" is worded as follows:

I refer to my earlier request for classification evaluation documents. Both Claire Hammerton Cole and Scott Tredwell refused access to those documents on the ground that the documents do not exist (s 24A of the FOI Act). That is very concerning because those documents should exist …

Because Ms Hammerton Cole and Mr Tredwell have refused to provide me with the classification evaluation documents that I requested, I have decided to ask the Federal Court to provide other documents.

Under the FOI Act, I request:

any and all documents setting out the following information in relation to the "Legal 2" National Judicial Registrar role:

a) the job title;
b) the date on which the role evaluation was finalised;
c) the name and title of the public official who conducted the role evaluation;
d) the role status (i.e. new or existing);
e) the date on which the role was initially created;
f) whether the role had been evaluated in the past and, if so, when and by whom;
g) the sources of information used (e.g. interviews with appropriate persons, specific documents, annual reports, business plans, policy proposals, organisational charts etc.) to evaluate the role in the light of the relevant APS/ SES work level standards;
h) reasons in support of the evaluation of relevant evaluation factors and, in particular, the appropriate APS/SES work level standards;
i) the total evaluation score;
j) the classification allocated to the role on the basis of the evaluation;
k) the name and title of the public official who approved the role evaluation.

Under the FOI Act, I also request:

any and all documents setting out the following information in relation to the SES1 National Judicial Registrar role:

a) the job title;
b) the date on which the role evaluation was finalised;
c) the name and title of the public official who conducted the role evaluation;
d) the role status (i.e. new or existing);
e) the date on which the role was initially created;
f) whether the role had been evaluated in the past and, if so, when and by whom;
g) the sources of information used (e.g. interviews with appropriate persons, specific documents, annual reports, business plans, policy proposals, organisational charts etc.) to evaluate the role in the light of the relevant APS/ SES work level standards;
h) reasons in support of the evaluation of relevant evaluation factors and, in particular, the appropriate APS/SES work level standards;
i) the total evaluation score;
j) the classification allocated to the role on the basis of the evaluation;
k) the name and title of the public official who approved the role evaluation.

120. In an internal review decision (https://www.righttoknow.org.au/request/u...) provided to the access applicant, Scott Tredwell, the Federal Court's General Counsel, stated:

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request. I am satisfied that the searches undertaken were thorough and comprehensive. I do not believe that any further search or enquiry that could be reasonably undertaken is likely to identify or discover further information that would assist in locating documents as described in the FOI request. I am satisfied pursuant to section 24A of the FOI Act that the documents cannot be found or do not exist.

Unequivocal and public statements as to the non-existence of evaluation documentation

121. FOI decision makers at the Federal Court have been unequivocal in stating that:

a) the classification evaluation for the National Judicial Registrar role that each of Phillip Allaway, Matthew Benter, Rupert Burns, Claire Gitsham, Susan O'Connor, David Ryan, and Tuan Van Le was selected to fill does not exist / cannot be found;

b) the classification evaluation for the National Judicial Registrar role that each of Phillip Allaway, Matthew Benter, Rupert Burns, Claire Gitsham, Susan O'Connor, David Ryan, and Tuan Van Le applied for and was selected to fill does not exist / cannot be found (notice the distinctions between (a) and (b));

c) the classification assessment for the Legal 2 National Judicial Registrar vacancies that each of Phillip Allaway, Matthew Benter, Rupert Burns, Claire Gitsham, Susan O'Connor, David Ryan, and Tuan Van Le relevantly first came to fill does not exist / cannot be found;

d) to the extent that it differs from the documents in (c) above, the classification assessment for the Executive Level 2 National Judicial Registrar vacancies that each of Phillip Allaway, Matthew Benter, Rupert Burns, Claire Gitsham, Susan O'Connor, David Ryan, and Tuan Van Le relevantly first came to fill does not exist / cannot be found;

e) the classification assessment for the SES Band 1 National Judicial Registrar vacancies that each of Phillip Allaway, Matthew Benter, Rupert Burns, Claire Gitsham, Susan O'Connor, David Ryan, and Tuan Van Le

relevantly first came to fill does not exist / cannot be found;

f) the APS role and classification evaluation records for the Legal 2 National Judicial Registrar positions do not exist / cannot be found;

g) the SES role and classification evaluation records for the SES Band 1 National Judicial Registrar positions do not exist / cannot be found;

h) no classification evaluations conducted for Legal 2 and SES 1 National Judicial Registrar roles in the Federal Court exist / can be found;

i) not a single document exists / can be found that sets out the:

• the job title;
• the date on which the role evaluation was finalised;
• the name and title of the public official who conducted the role evaluation;
• the role status (i.e. new or existing);
• the date on which the role was initially created;
• whether the role had been evaluated in the past and, if so, when and by whom;
• the sources of information used (e.g. interviews with appropriate persons, specific documents, annual reports, business plans, policy proposals, organisational charts etc.) to evaluate the role in the light of the relevant APS/ SES work level standards;
• reasons in support of the evaluation of relevant evaluation factors and, in particular, the appropriate APS/SES work level standards;
• the total evaluation score;
• the classification allocated to the role on the basis of the evaluation;
• the name and title of the public official who approved the role evaluation.

in relation to the “Legal 2” National Judicial Registrar role; and

j) not a single document exists / can be found that sets out the

• the job title;
• the date on which the role evaluation was finalised;
• the name and title of the public official who conducted the role evaluation;
• the role status (i.e. new or existing);
• the date on which the role was initially created;
• whether the role had been evaluated in the past and, if so, when and by whom;
• the sources of information used (e.g. interviews with appropriate persons, specific documents, annual reports, business plans, policy proposals, organisational charts etc.) to evaluate the role in the light of the relevant APS/ SES work level standards;
• reasons in support of the evaluation of relevant evaluation factors and, in particular, the appropriate APS/SES work level standards;
• the total evaluation score;
• the classification allocated to the role on the basis of the evaluation;
• the name and title of the public official who approved the role evaluation.

in relation to the “SES1” National Judicial Registrar role.

122. It is important to appreciate the point being pressed here. The Federal Court has stated, publicly and unequivocally, that not one of the documents identified in paragraph 121 of my submissions exists / can be found.

123. The upshot of the public and unequivocal statements made by decision makers in the Federal Court is that:

a) no evidence of a role evaluation conducted for the “Legal 2” National Judicial Registrar role in the Federal Court exists;
b) no evidence of a role evaluation conducted for the “SES1” National Judicial Registrar role in the Federal Court exists;
c) no evidence of a classification evaluation conducted for the “Legal 2” National Judicial Registrar role in the Federal Court exists;
d) no evidence of a classification evaluation conducted for the “SES1” National Judicial Registrar role in the Federal Court exists;
e) no evidence of a role re-evaluation (i.e. a role review) conducted for the “Legal 2” National Judicial Registrar role in the Federal Court exists;
f) no evidence of a role re-evaluation (i.e. a role review) conducted for the “SES1” National Judicial Registrar role in the Federal Court exists;
g) no evidence of a classification re-evaluation (i.e. the purpose and end of a role review) conducted for the “Legal 2” National Judicial Registrar role in the Federal Court exists; and
h) no evidence of a classification re-evaluation (i.e. the purpose and end of a role review) conducted for the “SES1” National Judicial Registrar role in the Federal Court exists.

124. In other words, there never was “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.” Ms McMullan’s claim that there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load” is a patent falsehood. Little wonder that Mr Tredwell’s opening salvo in Document 1 was “[t]here is no specific document that identifies when a National Judicial Registrar position is classified as SES1 or EL2.”

125. Ms McMullan’s exculpatory conclusion (allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated) is grounded on a false premise.

126. It is bad enough that Ms Sims has, on the flimsiest assertions of opinion (i.e. opinions unsupported by any cogent reasoning or evidence) attempted to convince the OAIC that Documents 1 and 2 support the exculpatory conclusion Ms McMullan reached because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load.” But for Ms Sims to continue pretending that Documents 1 and 2 support the exculpatory conclusion Ms McMullan reached because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load” when decision makers in the Federal Court of Australia have publicly and unequivocally stated that no evidence whatsoever exists of “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load” is just pigheaded.

127. I reiterate the point I made in paragraph 94 of these submissions. Ms Sims’ desperate and feeble attempt to justify the decisions made by Ms Strangio and Mr Spaccavento is motivated primarily, if not solely, by the Australian Public Service Commission’s unwillingness to accept that a public interest disclosure investigation conducted by an acting assistant commissioner of the APSC was sorely mishandled. But it is pointless to

continue pretending that Ms McMullan's exculpatory conclusion (allegations of impropriety and, presumably, unlawful conduct in the context of the recruitment of National Judicial Registrars were unsubstantiated) is grounded on evidence. It is plainly not.

☺

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